

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

EUROPEAN COMMUNITY,

Plaintiff,

v.

RJR NABISCO, INC., *et al.*,

Defendants.

00 Civ. 06617 (NGG/VVP)

DEPARTMENT OF AMAZONAS, *et al.*,

Plaintiffs,

v.

PHILIP MORRIS COMPANIES INC., *et al.*,

Defendants.

00 Civ. 2881 (NGG/VVP)

00 Civ. 4530 (NGG/VVP)

00 Civ. 3857 (NGG/VVP)

(Consolidated)

**REQUEST FOR PRODUCTION OF DOCUMENTS IN CONNECTION WITH
DEFENDANTS' MOTION TO DISQUALIFY COUNSEL OR DISMISS
COMPLAINTS FOR PREJUDICIAL ETHICAL VIOLATIONS BY
PLAINTIFFS' ATTORNEYS**

Defendants hereby request the plaintiff Departments, Plaintiffs' Attorneys and BERG investigation firm to produce the following documents for inspection at the offices of Arnold & Porter, 399 Park Avenue, New York, New York 10022-4690, no later than December 31, 2000. All documents should be directed to the attention of the undersigned Arnold & Porter counsel. In lieu of originals, legible copies of the requested documents may be produced.

INSTRUCTIONS

A. Produce all documents in full, without any abbreviations, amendments, or redactions. If you cannot produce any requested document in full, produce the most

complete copy of the document practicable, even if this would require the production of multiple copies.

B. If you fail to understand the meaning of any request, or any word, phrase, or other portion of any request, you may contact the undersigned counsel for clarification. If clarification is not sought, respond to the request as fully and completely as possible, following the instructions and definitions provided, and explain in detail the portion deemed ambiguous and the interpretation/construction used in responding.

C. These requests encompass all documents that are subject to production, regardless of location. This includes all documents within your possession, custody or control, including documents maintained by any of the Departments or their agencies, associations, officials, agents, and/or employees. This request also includes all responsive documents that are in the possession, custody or control of the Plaintiffs' Attorneys, as defined below and in the possession, custody or control of the BERG investigation firm.

D. Produce the requested documents as they are kept in the ordinary course of business or government operations, whether in English, Spanish or other language (and any translated copies thereof), identifying documents by file keeper. Produce all non-identical copies of all responsive documents. Do not separate documents that are attached to each other or contained in a file, folder, envelope or similar binder. To the extent possible consistent with these instructions, organize the responsive documents to correspond with the numbers of the specific document requests. If a particular document is responsive to more than one document request, then provide the numbers of all requests to which the document responds.

E. If you object to a particular document request, enumerate and explain with particularity all grounds for the objection(s) and produce the requested documents subject to the objection. Objection to a portion of any request does not relieve you of the duty to respond fully to the parts that are not objectionable.

F. If a claim of privilege is asserted with respect to any responsive document, you should provide the information required by Local Civil Rule 26.2 of the United States District Court for the Eastern District of New York. You should identify the nature of the privilege (including work product) which is being claimed and, if the privilege is governed by state law, indicate the state's privilege rule being invoked. In addition, you should provide the following information in your objection: (1) the type of document, e.g., letter or memorandum; (2) the general subject matter of the document; (3) the date of the document; and (4) such other information as is sufficient to identify the document, including, where appropriate, the author of the document, the addressees of the document, and any other recipients shown in the document, and, where not apparent, the relationship of the author, addressees, and recipients to each other.

Except as otherwise specified, all defined terms shall be construed in accordance with the "Definitions" section below.

DEFINITIONS

A. The following terms shall be construed in accordance with Local Civil Rule 26.3 of the United States District Court for the Eastern District of New York:

(1) "Communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise);

(2) "Document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a), including, without limitation, electronic or computerized data compilations. A draft or non-identical copy is a separate document within the meaning of this term;

(3) "Concerning" means relating to, referring to, describing, evidencing or constituting; and

(4) "All" shall be construed as all and each.

B. The "Departments" or "plaintiff-Departments" mean any of the 25 Departments of the Republic of Colombia and the Capital District of Santa Fe De Bogotá, named as Plaintiffs in case numbers 00 Civ. 2881, 4530, and 3857, which have been consolidated in this action. The terms also include all attorneys, government agencies, associations, officials, agents and/or employees of the plaintiff-Departments.

C. The "European Community" means the European Community (and all Member States it purports to represent) named as the Plaintiff in case number 00 Civ. 6617, which has been consolidated in this action. The term also includes all attorneys, government agencies, associations, officials, agents and/or employees of the European Community.

D. The "Plaintiffs' Attorneys" means any of the counsel appearing for the plaintiffs in this consolidated action, including, but not limited to, the following law firms (and any attorneys or other law firms affiliated therewith):

(1) Krupnick, Campbell, Malone, Roselli, Burser, Slama, Hancock, McNelis, Liberman & McKee, P.A.; and/or

(2) Speiser, Krause, Nolan & Granito; and/or

- (3) Sacks and Smith; and/or
- (4) Sacks, Weston, Smolinsky, Albert & Lubner.

DOCUMENT REQUESTS

The Departments, Plaintiffs' Attorneys and BERG investigation firm are requested to produce the following documents, subject to the Instructions and Definitions set forth above:

1. All documents concerning communications between the Departments and the Plaintiffs' Attorneys concerning the retention of the Plaintiffs' Attorneys as counsel in this action, including:

(a) All executed retainer agreements between the Plaintiffs' Attorneys and any of the plaintiff-Departments;

(b) All exhibits, addenda, amendments, or modifications to executed retainer agreements between the Plaintiffs' Attorneys and any of the plaintiff-Departments;

(c) All drafts and prior versions of retainer agreements (including all addenda, amendments, or modifications thereto) between the Plaintiffs' Attorneys and any of the plaintiff-Departments;

(d) All communications concerning the negotiation or execution of retainer agreements between the Plaintiffs' Attorneys and any of the plaintiff-Departments; and

(e) All documents concerning any solicitation, proposal, or bid by the Plaintiffs' Attorneys to any of the plaintiff-Departments or any other government entity concerning or evidencing the retention of counsel in this matter, including all responsive

correspondence, proposals, bids, submissions, presentations, reports, or notes of meetings or telephone conversations.

2. All documents concerning communications by the Departments or the Plaintiffs' Attorneys concerning the retention of any private investigation firm in this matter by the Departments and/or the Plaintiffs' Attorneys, including:

(a) All executed retainer agreements between any private investigation firm and the Plaintiffs' Attorneys and/or any of the plaintiff-Departments;

(b) All exhibits, addenda, amendments, or modifications to executed retainer agreements between any private investigation firm and the Plaintiffs' Attorneys and/or any of the plaintiff-Departments;

(c) All drafts and prior versions of retainer agreements (including all addenda, amendments, or modifications thereto) between any private investigation firm and the Plaintiffs' Attorneys and/or any of the plaintiff-Departments;

(d) All communications concerning the negotiation or execution of retainer agreements between any private investigation firm and the Plaintiffs' Attorneys and/or any of the plaintiff-Departments; and

(e) All documents concerning any solicitation, proposal, or bid by any private investigation firm and/or Plaintiffs' Attorneys to any of the plaintiffs-Departments or any other government entity concerning the retention of any private investigation firm in this matter, including all responsive correspondence, proposals, bids, submissions, presentations, reports, or notes of meetings or telephone conversations.

3. All documents or communications concerning the “decision to hire the U.S. law firms . . . made by the Governors of the Colombian Departments on May 10,

1999,” as described in the Affidavit of Miguel Raad Hernandez, Governor of Bolivar, and attached as Exhibit E to Plaintiffs' Memorandum of Law of the Departments of the Republic of Colombia In Opposition to Defendants' Motion to Disqualify Counsel or Dismiss the Complaint. This request includes, but is not limited to, the minutes of any Governors' meeting occurring on or about May 10, 1999, the minutes of any other related meetings, and any correspondence, submissions, presentations, reports, or notes concerning such meetings.

4. All documents or communications concerning the “meeting in Paipa, Boyacá, on August 6, 1999, at the Governors' Conference,” as described in the Affidavits of Jesús Rosero Ruano, Governor of Nariño, and Miguel Raad Hernandez, Governor of Bolivar, and attached as Exhibits C and E to Plaintiffs Memorandum of Law of the Departments of the Republic of Colombia In Opposition to Defendants' Motion to Disqualify Counsel or Dismiss the Complaint. This request includes, but is not limited to, the minutes of the Governors' Conference meeting occurring on or about August 6, 1999, the minutes of any other related meetings, and any correspondence, submissions, presentations, reports, or notes concerning such meetings.

5. All documents or communications between or among the Departments, the governors or other representatives of the Departments, and/or the Federation of Departments concerning this action or the retention of counsel or investigators in this action.

6. All documents concerning communications between the Plaintiffs' Attorneys and the European Community concerning or evidencing the retention of the Plaintiffs' Attorneys as counsel, including:

(a) All executed retainer agreements between the Plaintiffs' Attorneys and the European Community;

(b) All exhibits, addenda, amendments, or modifications to executed retainer agreements between the Plaintiffs' Attorneys and the European Community;

(c) All drafts and prior versions of retainer agreements (including all addenda, amendments, or modifications thereto) between the Plaintiffs' Attorneys and the European Community; and

(d) All communications concerning the negotiation or execution of retainer agreements between the Plaintiffs' Attorneys and the European Community.

CRAVATH, SWAINE & MOORE

By: Ronald Rolfe (CS)
Ronald S. Rolfe (RR-0846)
Max R. Shulman
Dan Rottenstreich
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019
(212) 474-1000

*Counsel for Defendant
British American Tobacco
(Investments) Limited*

KIRKLAND & ELLIS

By: Peter Bellacosa (CS)
Peter A. Bellacosa (PB-2394)
Citigroup Center
153 East 53rd Street
(212) 446-4800

– and –

David M. Bernick
Jonathan C. Bunge
200 East Randolph Drive
Chicago, IL 60601
(312) 861-2248

*Counsel for Defendant
Brown & Williamson Tobacco
Corporation*

ARNOLD & PORTER

By: Graig A. Stewart (CS-5655)
Graig A. Stewart (CS-5655)
399 Park Avenue
New York, NY 10022-4690
(212) 715-1000

– and –

Irvin B. Nathan
Christopher D. Man
555 Twelfth Street, N.W.
Washington, D.C. 20004-1206

*Counsel for the Defendants
Philip Morris Incorporated
Philip Morris International Inc.
Philip Morris Products, Inc.
Philip Morris Latin America
Sales Corporation
Philip Morris Duty Free, Inc.*

Dated: December 21, 2000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of December, 2000, I caused a copy of the annexed **REQUEST FOR PRODUCTION OF DOCUMENTS IN CONNECTION WITH DEFENDANTS' MOTION TO DISQUALIFY COUNSEL OR DISMISS COMPLAINTS** to be served by hand delivery upon:

John J. Halloran, Jr., Esq.
Speiser, Krause, Nolan & Granito
Two Grand Central Tower
140 East 45th Street, 34th Floor
New York, NY 10017

Irvin B. Nathan